IN RE: PETITION FOR SPECIAL ZONING COMMISSIONER 50' S Pulaski Hwy.160'W Ebenezer Rd.& WS Ebenezer Rd. 217'S, Pulaski Highway \* OF BALTIMORE COUNTY (10741 Pulaski Highway) CASE #89-78X 7th Councilmanic District \* 15th Election District Charles J. Kubin, et ux Petitioners

\*\*\*\*\*

## FINDINGS OF FACTS AND CONCLUSIONS OF LAW

The Petitioners request approval of a Special Exception to use the herein described property for one (1) single and (1) double-faced illuminated 12' x 25' outdoor advertising (sign) structure, as more particularly described on Petitioners' Exhibit 1.

The Petitioner, Penn Advertising of Baltimore, Inc., appeared by their agent, Mr. Barry Freidman, and were represented by Stuart R. Berger, Esquire. The Petitioners, Mr. and Mrs. Charles J. Kubin, did not appear. George Dawson of the Maryland State Highways appeared for informational purposes, but did not testify. There were no Protestants. All of the testimony was provided by Mr. Barry Freidman who testified to the prerequisites of Section 502.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) and testified in the affirmative that all of those prerequisites would be met by the establishment of a double faced illuminated outdoor advertising structure on the subject property, as shown on Petitioner's Exhibit 1. Furthermore, Mr. Freidman also testified as to the requirements established by Section 413.3 (a thru i) have or would be complied with by this particular outdoor advertising structure and that the subject site is consistent with B.C.Z.R.

PETITION FOR SPECIAL EXCEPTION TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Exception under the Zoning Law and Zoning Regulations of Baltimore County, to use the herein described property for \_\_\_single and double-faced illuminated 12' x 25' advertising structure

Property is to be posted and advertised as prescribed by Zoning Regulations. I, or we, agree to pay expenses of above Special Exception advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition Legal Owner(s): Contract Purchaser: Charles J. Kubin Penn Advertising of Baltimore, Inc.... 3001 Reminaton Avenue (Type or Print Name) X annal Subin Baltimore, Maryland 21211 City and State Attorney for Petitioner: 6305 Birchwood Avenue Stuart R. Berger, esq. (Type or Print Name) Baltimore, Maryland 21214 Name, address and phone number of legal owner, con-36 South Charles Street tract purchaser or representative to be contacted Baitimore, Maryland 21201 City and State

ORDERED By The Zoning Commissioner of Baltimore County, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_8, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the \_\_\_\_\_day of september, 19 97, at 9:30 o'clock

J. Robert Haines Zoning Commissioner of Baltimore County.

ESTIMATED LENGTH OF HEARING (-1/2HR) HUR. /THES. /NED. - KEXT TWO MORTHS REVIEWED BY: CEP DATE 6 7/87 OTHER \_\_\_

Attorney's Telephone No.: \_(301)\_332-8562\_

The Petitioner testified that, based on his professional experience, it was his opinion that the business would not cause any adverse impact and would not create traffic congestion over and above what already exists. He testified that the conditions delineated in Section 502.1 (B.C.Z.R.) will be satisfied.

The Petitioner had the burden of adducing testimony and evidence which would show that the proposed use met the prescribed standards and requirements set forth in Section 502.1. In fact, the Petitioner has shown that the proposed use would be conducted without real detriment to the neighborhood and would not adversely affect the public interest. The facts and circumstances do not show that the proposed use at the particular location described by Petitioner's Exhibit 1 would have any adverse impact above and beyond that inherently associated with such a special exception use, irrespective of its location within the zone. Schultz v. Pritts, 432 A2d 1319 (1981).

The proposed use will not be detrimental to the health, safety or general welfare of the locality, nor tend to create congestion in roads, streets, or alleys therein, nor be inconsistent with the purposes of the property's zoning classification, nor in any other way be inconsistent with the spirit and intent of the B.C.Z.R.

After reviewing all of the testimony and evidence presented, it appears that the special exception should be granted.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested should be granted.

THEREFORE, IT IS ORDERED, by the Zoning Commissioner of Baltimore County, Maryland, this 6 day of December 1988 that the Petition

for Special Exception for one (1) single and (1) double-faced illuminated 12' x 25' outdoor advertising (sign) structure, as more particularly described on Petitioners' Exhibit 1 , be and the same is hereby GRANTED.

> ZONING COMMISSIONER OF BALTIMORE COUNTY

cc: Peoples Counsel Mr.and Mrs. B. Allen Stephenson Stuart R. Berger, Esquire Mr. Barry Freidman

Baltimore County Zoning Commissioner Office of Planning & Zoning Towson, Maryland 21204

J. Robert Haines Zoning Commissioner

December 5, 1988



Stuart R. Berger, Esquire 36 South Charles Street Baltimore, Maryland 21201

> RE: Petition for Special Exception Case #88-78X Charles J. Kubin, et ux, Petitioners

Dear Mr. Berger:

Enclosed please find the decision rendered in the above captioned case. The Petition has been granted, in accordance with the attached

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal within thirty (30) days of the date of the Order to the County Board of Appeals. If you require additional information concerning filing an appeal, pleae feel free to contact our Appeals Clerk at 494-3391.

> Very truly yours, Robert Haires Zoning Commissioner

cc: Peoples Counsel Mr. Barry Freidman Mr. and Mrs. Charles J. Kubin

PROPERTY DESCRIPTION 10741 PULASKI HIGHWAY

SIGN A - BEGINNING AT A POINT LOCATED ON THE SOUTH SIDE OF PULASKI HIGHWAY (150 FEET WIDE), 160 FEET WEST OF THE CENTERLINE OF EBENEZER ROAD (42 FEET WIDE), AND 125 FEET FROM THE CENTERLINE OF PULASKI HIGHWAY AND THENCE RUNNING THE FOLLOWING COURSES AND DISTANCES: 1) SOUTHWESTERLY AND PARALLEL TO PULASKI HIGHWAY A DISTANCE OF 10 FEET, THENCE 2) SOUTHEASTERLY AND AT A RIGHT ANGLE A DISTANCE OF 30 FEET TO A POINT, THENCE 3) NORTHEASTERLY AND AT A RIGHT ANGLE A DISTANCE OF 10 FEET TO A POINT, THENCE 4) NORTHWESTERLY AND AT A RIGHT ANGLE A DISTANCE OF 30 FEET TO THE BEGINNING POINT.

SIGN B - BEGINNING AT A POINT LOCATED ON THE WEST SIDE OF EBENEZER ROAD (42 FEET WIDE), 217 FEET SOUTH OF THE CENTERLINE OF PULASKI HIGHWAY (150 FEET WIDE), AND 31 FEET FROM THE CENTERLINE OF EBENEZER ROAD AND THENCE RUNNING THE FOLLOWING COURSES AND DISTANCES: 1) SOUTHWESTERLY AND AT A RIGHT ANGLE TO EBENEZER ROAD A DISTANCE OF 30 FEET TO A POINT, THENCE 2) NORTHWESTERLY AT A RIGHT ANGLE A DISTANCE OF 15 FEET TO A POINT, THENCE 3) NORTHEASTERLY AT A RIGHT ANGLE A D STANCE OF 30 FEET TO A POINT, THENCE 4) SOUTHEASTERLY AT A RIGHT ANGLE A DISTANCE OF 15 FEET TO THE BEGINNING POINT.

CERTIFICATE OF PUBLICATION

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of \_\_\_\_\_ successive weeks, the first publication appearing on Oct. 6, 19 88.

THE JEFFERSONIAN,

# 439

Baltimore County Zoning Commissioner Office of Planning & Zoning Towson, Maryland 21204 494-3353

J. Robert Haines

NOTICE OF HEARING

Dennis F. Rasmussen

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland as follows:

Petition for Special Exception CASE NUMBER: 89-78-X 50' S Pulaski Highway, 160' W Ebenzer Road and W/S Ebenezer Rd., 217' S Pulaski Highway (10741 Pulaski Highway) Petitioner(s): Charles J. Kubin, et ux Contract Purchaser(s): Penn Advertising of Baltimore, Inc. HEARING SCHEDULED: THURSDAY, OCTOBER 27, 1988 at 11:00 a.m.

Special Exception: Single and double-faced illuminated 12' x 25' advertising structure.

In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be in writing and received in this office by the date of the hearing set above or presented at the hearing.

J. ROBERT HAINES Zoning Commissioner of Baltimore County

MELNICOVE, KAUFMAN, WEINER, SMOUSE & GARBIS, P. A.

L PAIGE MARVEL PAULA M. JUNGHANS CEGILIA JANUSZKIEWI MARVIN J. GARBIS
LOUIS B. PRICE
ABRAHAM L. ADLER
EDWARD RASKIN
M. ALBERT FIGINSKI
ISAAC M. NEUBERGER
DAVID L. SNYDER '
GARY I. STRAUSBERG
GERARD P. MARTIN
AVRUM M. KOWALSKY
BANSOM J. DAVIS RUBERT C. FOWLER
STEPHEN B. CAPLIS
PRICE O. GIELEN
PHYLLIS W. BROWN
MICHAEL SCHATZOW
M. RUSSELL FRISBY, J
HEIL J. BUTHER

BERNARD S. MELNICOVE

\_\_\_\_

36 SOUTH CHARLES STREET 36 SOUTH CHARLES STREET

SIXTH FLOOR

BALTIMORE, MARYLAND 21201-3060

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BALTIMORE, MARYLAND 21201-3060

BALTIMORE (301) 332-8500

BALTIMORE (301) 332-8500

BALTIMORE (301) 332-8500

BALTIMORE (301) 332-8500 BALTIMORE (301) 332-8500 WASHINGTON (202) 775-9085

RAPIFAX (301) 332-8594 (710) 234-2414

(WRITER'S DIRECT DIAL NO.) 332-8562

August 8, 1988

NANCY S PRIEDMAN
BRUCE L. MANN
ARON U. RASKAS
ELIZABETH MARZO BORINSKY
CHRISTINE WOJTKOWIAK DAVID R. SONTHARIE
DAVID R. SONNENBERG
HOLLY N. LINDEMAN
ROBERT E CAHILL, JR.
JEFFREY P. MCEVOY
JULIE C. JANOFSKY
JOYCE K. BECKER
EDWARD A. HIRSCHHORN
ARTHUR R. ROSE
NANCY S. ALLEN
STUART R. BERGER
WEIL M. LEVY
VAROL K. LISMAN
WAAN L. BAUMAN
HAN L. BAUMAN
HYMAN P. TATELBAUM

RONALD B RUBIN

GARY L ALEXANDER
ANDREA F. KELLY
MICHAEL F LEMIRE
MIRIAM L FISHER
DONALD 5 MERINGER
EDWARD B STEINBERG

PETER B ROSENWALD, I NANCY S FRIEDMAN

Ms. Gwendolyn Stevens County Office Building Room 111 111 West Chesapeake Avenue

Towson, Maryland 21204

Re: Petitions for Special Exceptions
Case Nos.: 89-77-X and 89-78-X

Dear Ms. Stevens:

Confirming our conversation today, I requested a postponement of the hearings on the above-referenced Petitions for Special Exceptions presently scheduled for September 21, 1988. As I advised you, since September 21, 1988 is a religious holiday, I will be unavailable to attend the hearings on that date. Further, no other attorney in this office is available to attend the hearings on the above-referenced date.

In light of this scheduling difficulty, we would appreciate your rescheduling the hearings for as soon after September 21, 1988 as possible. Thank you for your courtesy and cooperation with regard to this matter.

Very truly yours,

Stuart R. Berger

cc: Mr. Barry Freedman

Petition for Special Exception Case number: 89-78-X 50' S Pulaski Highway, 160 W Ebenzer Road and W/S Ebenzer Rd., 21" S Pulaski Highway (10741 Pulaski Highway) x 25' advertising structure.
in the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Com-missioner will, however, entertain any request for a stay of the in-suance of said permit during the period for good cause shown. Such request must be in writing and received in this office by the date of the hearing set above or presented at the hearing. J. ROBERT HAINES 4 9501 Oct 6

NOTICE OF HEARING

The Zoning Commissioner of Battimore County, by authority of the Zoning Act and Regulations of Battimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building, focated at 111 W. Chesapeake Avenue in Towson, Maryland as follows:

Baltimore County Zoning Commissioner
Office of Planning & Zoning Towson, Maryland 21204 494-3353

717 21201 Re: POSTPONEMENT REQUEST

Dear Sir:

This to acknowledge receipt of your postponement request regarding the following petition:

> Case number: Petitioner(s):

IN THE MATTER OF

**8012 PULASKI HIGHWAY** 

CHARLES J. KUBIN, et al.

10741 PULASKI HIGHWAY

Case No: 89-78-X

FOR A PETITION FOR SPECIAL

Case No: 89-77-X

IN THE MATTER OF

EXCEPTION

EXCEPTION

JANICE MARIE STEPHENSON, et al.

FOR A PETITION FOR SPECIAL

Location:

hearing date.

89-78-X 10741 Pulaski Heart

Please be advised that your request [ will [ ] will not pe granted, and as such, the case [ ] will [ will not proceed on the assigned date of September 21, 1988 Where applicable, you will be timely notified of the new

> J. ROBERT HAINES ZONING COMMISSIONER BALTIMORE COUNTY, MARYLAND

> > ZONING COMMISSIONER

BALTIMORE COUNTY

CC: Penn Gedvertiser & Baltimore

PETITIONER'S

EXHIBIT\_2

Zoning Commissioner Office of Planning & Zoning Towson, Maryland 21204 494-3353 J. Robert Haines

Penn Advertising of Baltimore, Inc.

3001 Remington Avenue Baltimore, Maryland 21211 Dennis F. Rasmussen

Date: 10/21/88

Petition for Special Exception CASE NUMBER: 89-78-X

Petitioner(s): Charles J. Kubin, et ux Contract Purchaser(s): Penn Advertising of Baltimore, Inc. HEARING SCHEDULED: MEDNESDAY, SEPTEMBER 21, 1988 at 0.38 a.m. PP 10/21/88 at/lam

Please be advised that 18400 is due for advertising and posting of the above-referenced property. All fees must be paid prior to the hearing. Do not remove the sign and post set(s) from the property from the time

BALTIMORE COUNTY, MARYLAND OFFICE OF FINANCE - REVENUE DIVISION MISCELLANEOUS CASH RECEIPT -01-615-ccc ice, County Office minutes before

post set(s), there each set not 8 8 122 \*\*\*\* 5408 17-TV8 -X VALIDATION OR SIGNATURE OF CASHIER J. ROBERT HAINES

the County Code, which requires notice and hearing prefatory to amendment. Because no notice or hearings preceded the Gold Book amendment at bar in Metromedia, the publications of 1957

and 1963 -- long thereafter applied in the County -- were

Zoning Commissioner of

Baltimore County

declared binding. Despite Metromedia, within months of that clear declaration, the County merely republished Section 413 in the same fashion declared fouled in Metromedia. The core -- and unusual -- issue at bar in these cases is whether, when promulgating its current edition of the zoning regulations which leaves out of Section 413.3 the B. R. (Business Roadside) zone, the Zoning Commissioner can ignore the Circuit Court for Baltimore County's ruling in Metromedia,

Inc. v. Baltimore County, Eq. No. 103167 and Sections 22-21 and 22-22(a) of the Baltimore County Code. These cases, therefore, require the Commissioner to determine what "version" of Section 413.3 is applicable to outdoor advertising signs petitioned for by the Petitioners and contract lessee. In order to assist this Court in understanding the issue(s) presented, the

Petitioners set out, in pertinent part, the Opinion of Judge Raine in Metromedia and the two relevant sections of the County Code.

EXCERPT FROM METROMEDIA V. BALTIMORE COUNTY,

LAW OFFICES OF & GARBIS, P.A. 36 S. CHARLES STREET

EQUITY NO. 103167 In 1955 the County published a mimeographed version of Section 413 of the Baltimore County Zoning Regulations which purported to be in conformity with certain regulations adopted

by the County Commissioners of Baltimore County on March 30, 1955. In 1957, and in 1963, the County republished this same version in the "Black" and "Blue" books respectively. For the next fourteen years the County treated these three published versions of Section 413 as the established rule, by adhering to the regulation, insisting that others follow its dictates, and representing to the Courts that this version of Section 413 was the law to be applied to all cases coming within its ambit.

In 1969, without notice or hearing, the County published yet another looseleaf volume of zoning regulations, the Red Book, which substantially altered Section 413 as it appeared in the previously promulgated versions. In 1975, the County published a gold looseleaf edition of the regulations (the Gold book). In this edition, Section 413 followed the Red book but was inconsistent with the Black and Blue books. The County explains the inconsistency as follows: While searching County archives, some county employee found, secreted away in a vault, the original version (the "Soft Book") of the 1955 zoning regulations which differed substantially from the three versions which the County had disseminated. Thereupon the County promulgated a new version of Section 413 in the Red and Gold Books without notice or hearing, picking up the original Soft Book text that differed significantly from the mimeographed and the Black and Blue versions.

The Plaintiff cried foul: The County is changing the rules in the middle of the game. The Plaintiff contends that the County, by repeated publication, abandoned any adherence to the Soft Book and that its long adherence to and dissemination of the old Section 413 constituted a de facto ratification of the mimeographed version of the 1955 zoning regulations. In support of this contention the Plaintiff cites Pease v. Peck, 16 How. (59 US), 595 (1855) which holds that the government's long acquiescence to a law which it has promulgated constitutes a ratification of that law, even though the promulgated version differs from the original text.

The consistent versions of Section 413 in the early mimeographed publication and in the Black Book and the Blue Book became effective and controlling law by publication, dissemination, ratification and long acquiescence. This version of the law was not validly changed by either the Red or the Gold Book since the promulgation of these sets of regulations was not done after the notice and hearing required by Section 22 of the County Code.

This Court will declare that the Defendant must accept application for special exceptions submitted by the Plaintiff

NOTICE OF HEARING Dennis F. Rasmussen County Executive

JUL 2 7 1988

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property and Regulations of Dailimore County will hold a public healing on the properties identified herein in Room 106 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland as follows:

Petition for Special Exception LNUX MUNICIPA 03-10-A
50' S Pulaski Highway, 160' W Ebenzer Road and W/S Ebenezer Rd., 217' S Pulaski Highway (10741 Pulaski Highway) Petitioner(s): Charles J. Kubin, et ux Contract Purchaser(s): Penn Advertising of Baltimore, Inc. HEARING SCHEDULED: WEDNESDAY, SEPTEMBER 21, 1988 at 9:30 a.m.

Special Exception: Single and double-faced illuminated 12' x 25' advertising structure.

In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be in writing and received in period for good cause shown. Such request most be in writing and received in this office by the date of the hearing set above or presented at the hearing.

Zoning Commissioner of Baltimore County

LAW OFFICES OF

MELNICOVE, KAUFMAN.

WEINER, SMOUSE

& GARRIS, P.A.

36 S. CHARLES STREET

Baltimore County

J. Robert Haines

494-3353

Zoning Commissioner
Office of Planning & Zoning

Towson, Maryland 2120!

Charles J. Kubin, et ux Penn Advertising of Baltimore, Inc. Stuart R. Berger, Esq.

RDAD (92 R/W) CEUTERLINE

> and, after hearing, determine the merits of the application based upon Section 413 as contained in the mimeographed publication of 1957 and 1963. This ruling is applicable only to Section 413 and to no other regulation.

[Issued July 1, 1981, by Raine, J.]

# EXCERPTS FROM BALTIMORE COUNTY CODE

Sec. 22-21. Preparation of zoning regulations and zoning maps.

(a) The planning board shall from time to time recommend to the county council for adoption, zoning regulations and zoning maps, showing the boundaries of the proposed districts, divisions or zones into which the county is divided pursuant to this title.

(b) The planning board from time to time may also recommend for adoption amendments or supplements to such regulations.... All such amendments or supplements to the zoning regulations and all such comprehensive revisions of the zoning maps shall be made in accordance with the same procedure herein specified for the original adoption of such regulations and maps....

(c) After such zoning regulations and zoning maps have been approved by the planning board, it shall release a preliminary report thereon. Thereafter, and subject to the giving of at least twenty (20) days' public notice in two (2) newspapers of general circulation in the county, the planning board shall hold one (1) or more public hearings on the proposed zoning maps. The board may hold one (1) or more public hearings on the proposed regulations or on matters referred to the board by the county council, unless required to hold such hearings by resolution of the county council adopted pursuant to section 22-7. During the period of such notice, the preliminary report of the planning board, with accompanying maps and exhibits, if any, shall be available for public inspection in the county office building. After such hearing or hearings have been held, the director of planning shall submit to the county council a report containing the final recommendations of the planning board with regard to the proposed zoning regulations, or maps, as the case may be; and, in the case of zoning maps, a copy of the final map as approved by the planning board shall be attached to such report. In the event of any disagreement among the members of the planning

LAW OFFICEE OF MELNICOYE, KAUFMAN. WEINER, SMOUSE & GARBIS, P.A. 4 S. CHARLES STREET BALTIMORE, MO

LAW OFFICES OF MELNICOVE, KAUFMAN. & GARBIS. P.A. BALTIMORE, MG 81201-3060

See §§3-402, 3-406, & 3-411, Courts Article, Md.

PETITIONERS' MEMORANDUM

County, per Raine, J., issued a clear opinion in Metromedia,

Inc. v. Baltimore County, Eq. No. 103167. The Circuit Court

exceptions for outdoor advertising signs, under Section 413.3

of the County's Zoning Regulations, must be determined under

the provisions published in the regulations as printed in 1957

and 1963. The 1975 Gold Book version of Section 413 was found

inapplicable. Further, the Circuit Court for Baltimore County,

Declaratory Judgment Act, 1 reasoned that amendments to the

zoning regulations had to adhere to Section 22-21 and 22-22 of

in declaring what law applied pursuant to Maryland's

for Baltimore County declared that applications for special

On July 1, 1981, the Circuit Court for Baltimore

- 2 -

- 3 -

- 4 -

board as to any part of the proposed zoning map or regulations, the dissenting member or members shall be entitled to file with the county council one (1) or more minority reports stating the basis for their disagreement with the majority, which shall be included with the final report of the majority.

Sec. 22-22. Action by county council on adoption of zoning regulations and Zoning maps.

(a) After the county council has received a final report of the planning board recommending adoption of any zoning regulations or zoning maps, the county council shall hold one or more public hearings thereon, giving at least twenty (20) days' notice thereof in at least two (2) newspapers of general circulation in the county. During such twenty (20) day period, the final report of the planning board with accompanying...maps and supporting exhibits, if any, together with any minority report and maps from any dissenting members of the planning board shall be available for inspection at the office of planning and zoning, in each councilmanic district and at such other public place as the county council may designate for public inspection. After the expiration of such period of notice, and following the public hearing or hearings, the county council may by ordinance adopt such regulations or maps, subject, however, to such changes or amendments therein as the county council may deem appropriate, but subject to the provisions of Section 22-21(e).

### QUESTION PRESENTED

After the Circuit Court for Baltimore County declared, in Metromedia v. Baltimore County, Equity No. 103167, what was the effective version of Section 413 of the Baltimore County Zoning Regulations, may the Zoning Commissioner ignore the decision, and permit the County to republish a different version of Section 413, so that outdoor advertising signs may not be granted as a Special Exception in a B. R. zone?

LAW OFFICES OF

M ILHICOVE, KAUFMAN,

& GARBIS, P.A.

RE W. CHARLES STREET

g: 201-3060

WEINER, SMOUSE

ARGUMENT

What Metromedia Declared.

The Metromedia decision exemplifies the "very confused and conflicting history" of Section 413 of the zoning regulations. In that context, the Metromedia case was initiated and pursued under Subtitle Four of Title 3 of the Courts Article, Md. Code. A suit for declaratory judgment seeks "to settle and afford relief from uncertainty"1/ rights under a County ordinance. 1' The court's declaration, moreover, "has the force and effect of a final judgment." 1

This Court, in Metromedia, relying upon venerable authority, ' determined that the version of Section 413 set out in Petitioners' Exhibit A "became effective and controlling law by publication, dissemination, ratification and long acquiescence [Emphasis supplied]. This law, the Metromedia opinion continued, "was not validly changed by either the Red or the Gold Book since the promulgation of these sets of regulations was not done after the notice and hearing required

2. §3-402, Courts Article, Md. Code; Cockran v. Zoning Comm'r, 41 Md. App. 437, 439-440 (1979); Marriott Corp. v. Village Realty & Inv., 58 Md. App. 145, 472 A.2d 510, 513 (1984). See also Restatement, Judgments, 2d (1982), p. 334 (quoted infra., p. 18-19).

3. See §3-406, Courts Article, Md. Code.

4. §3-411, Courts Article, Md. Code.

MELNICOVE, KAUFMAN.

WEINER, SHOUSE

& GARBIS, P.A.

36 S. CHARLES STREET

BALTIMORE, MO

5. Pease v. Peck, 18 How. (59 U.S.) 595 (1855). See, particularly, 18 How. (59 U.S.) at 596-7.

(footnote 5 cont'd)

by Section 22 of the County Code. " Consequently, Metromedia declared that the County must apply the version of Section 413 contained in Petitioners' Exhibit A to "applications for special exception submitted by Petitioners. Those versions include B.R. as a zone in which an outdoor advertising sign may be placed as a Special Exception.

In sum, Metromedia declared, as the applicable law, the versions of Section 413.3 which included B.R. as a zone in which, by Special Exception, an outdoor advertising sign could be erected. Further, Metromedia holds that the "applicable law\* could not be amended except in accord with Section 22 of the County Code.

The Maryland cases make clear that notice and hearing on amendments to zoning regulations are mandatory. Failure to give notice required by law, for example, is fatal to the jurisdiction to conduct a hearing. See Cassidy v. County Board of Appeals of Baltimore County, 218 Md. 418, 421, 422 (1958). Indeed, even if initial notice is given, substantial change

(footnote 5 cont'd)

MELNICOVE, KAUFMAN,

& GARBIS, P.A.

36 B. CHARLES STREET

BALTIMORE, MO 21201-3060

For similar rulings, see Town of Pacific v.
Seifert, 79 Mo. 210, 213 (1883); Wade v. Woodward, 145 So. 737 (Miss. 1933); Edel v. Filer Township, Mainstee County, 211
N.W.2d 547, 549 (Mich. App. 1973); O.P. Corporation v. Village
of North Palm Beach, 278 So.2d 593 (Fla 1973); City of Creston v. Center Milk Products Co., 51 N.W.2d 463, 465 (Iowa, 1952); Taylor v. Schlemmer, 183 S.W.2d 913, 916 (Mo. 1944).

There is not doubt that the contract lessee is a division of Metromedia, Inc., the plaintiff in the Metromedia

from what was announced is not proper. See Ransake v. Board of County Commissioners, 268 Md. 295 (1973); Von Lusch v. Board of County Commissioners, 268 Md. 445, 454 (1973). Without affording notice and hearing, there was no substantial compliance with the "applicable law," Crozier v. Co. Comm. Pr. George's Co., 202 Md. 501, 506 (1953), and the publication in the current regulations of the repudiated Gold Book version of Section 413.3 was invalid.

#### CONCLUSION

This identical issue, i.e., whether Section 413.3 includes B.R. as a zone in which, by Special Exception, an outdoor advertising sign could be errected has been litigated twice by the contract lessee. Initially, in Metromedia, Inc. v. Baltimore County, Eq. No. 103167, Judge Raine decided the answer in the affirmative. Thereafter, this identical issue came before the Honorable Joseph F. Murphy, Jr. in Circuit Court for Baltimore County Case No. 2/135/84CG435, docketed as In the Matter of the Application of Euclay Realty for a Special Exception. A copy of Judge Murphy's Order in that case is attached hereto as Exhibit B and incorporated by this reference. Judge Murphy agreed, and therefore, reversed the denial of the Petitions for Special Exception in a B.R. Zone by the County Board of Appeals.

Simply stated, Metromedia and Euclay Realty decided that the early disseminated mimeographed version of §413.3 is

MELNICOVE, KAUFMAN,

& GARBIS, P.A.

the controlling law. That version, i.e. in the Black Book or the Blue Book included B.R. as a zone in which a Special Exception could be granted. The existence of Metromedia of the declaration of the law means that in order for Baltimore County to amend §413.3 of the zoning law, the dictates of Section 22-21 and 22-22 of the County Code would have to be followed. They were ignored. Therefore, the version of Section 413.3 declared to the law in Metromedia was not effectively amended in the publicatin of the new regulations. Without adhering to Section 22-21 and 22-22 after the Court's declaration of the law, the Black and Blue Book versions of Section 413.3 which include B.R. as a zone in which an outdoor advertising structure may be located as a Special Exception must be applied. The Petitioners implore the Zoning Commissioner to

review the decisions rendered by the Circuit Court for Baltimore County, and respectfully request that the Commissioner grant the Petitions for Special Exceptions.

Respectfully submitted,

MELNICOVE, KAUFMAN, WEINER, SMOUSE & GARBIS, P.A. 600 Charles Center South

301-332-8562

altimore, Maryland 21201-3060

Attorneys for Petitioners

36 South Charles Street

& GARBIS, P.A. SE S. CHARLES STREET

BALTIMORE. MÖ

21301-3060

CERTIFICATE OF POSTIA Date of Posting 10/5/88 special Exception oner Charles J. Kubin stex - Confront Problem, Porta testation of Bollo, Inc. Location of property: SW/cox, Pulos K: Hay + Ebane zor Rd, comme 175+ W/formen AL + approx 1151 + 5/Poloski Huy ocation of Signer Fassing Pulosti huy, oppress, 15 FT. Too dwig, & operas, 1757 W/ Ebosson R1.

IN THE MATTER OF THE APPLICATION OF CIRCUIT COURT EUCLAY REALTY FOR A SPECIAL EXCEPTION APPEAL FROM THE COUNTY BALTIMORE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY \* AT LAW File No. 84-93-X \* Case 2/135/84CG435 This Appeal having come on for a hearing in open Court on November 26, 1984, after the submission of the memoranda allowed by Rule Bl2, and the reasons for this Court's judgment having been set forth on the record during the proceedings on November 26, 1984, it is this 29 H, day of hovember 1984. ADJUDGED, ORDERED and DECREED that the Order of the County Board of Appeals dated July 11, 1984 is reversed and the Special Exception petitioned for by Appellants be and the same is hereby granted. Approved as to form: Deputy People's Counsel Room 223, Court House Towson, MD 21204 M. Albert Figinski Melnicove, Kaufman, Weiner & Smouse, P.A. 36 S. Charles Street Baltimore, MD 2120

> True Copy Tout ELMER H. MARLOWE, JA, Cork

0848f/1

-9-

89-78-X BALTIMORE COUNTY OFFICE OF PLANNING & ZONING County Office Building 111 W. Chesapeake Avenue Towson, Maryland 21204 Your petition has been received and accepted for filing this day of \_\_\_\_\_\_, 1988.

Petitioner Change of the Ct ux

Attorney Stunes R. Berge

Petitioner's

ZONING COMMISSIONER

Received by: Tanes E. Duer Chairman, Zoning Plans

Advisory Committee

Baltimore County Fire Department Towson, Maryland 21204-2586 494-4500

Paul H. Reincke

June 21, 1988

J. Robert Haines Zoning Commissioner Office of Planning and Zoning Baltimore County Office Building Towson, MD 21204



Re: Property Owner: Charles J. Kubin, et ux Location: 1 - 50' S. of Pulaski Hwy., 160' W. Ebenezer Road

2 - W/S Ebenezer Rd., 217' S. Pulaski Hwy. Zoning Agenda: Meeting of 6/21/88 Item No.: 439

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with an "X" are applicable and required to be corrected or incorporated into the final plans for the property.

- ( ) 1. Fire hydrants for the referenced property are required and shall be located at intervals or \_\_\_\_ feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works.
- ( ) 2. A second means of vehicle access is required for the site.
- ( ) 3. The vehicle dead end condition shown at \_\_\_\_\_

EXCEEDS the maximum allowed by the Fire Department.

- ( ) 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.
- ( ) 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code," 1976 edition prior to occupancy.
- ( ) 6. Site plans are approved, as drawn.
- ( $_{\rm X}$ ) 7. The Fire Prevention Bureau has no comments at this time.

Noted and Special Inspection Division

Fire Prevention Bureau

/j1

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

September 15, 1988

COUNTY OFFICE BLDG. 111 W. Chesapeake Ave.

MEMBERS

Department of

Bureau of Engineering

Stuart R. Berger, Esquire 36 South Charles Street Baltimore, Maryland 21201

Dear Mr. Berger:

RE: Item No. 439 - Case No. 89-78-X Petitioner: Charles J. Kubin, et ux Petition for Special Exception

State Roads Commission Bureau of Fire Prevention Health Department Project Planning Building Department Board of Education

Zoning Administration

Industrial Development

Traffic Engineering

The Zoning Plans Advisory Committee has reviewed the plans submitted with the above referenced petition. The following comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems with regard to the development plans that may have a bearing on this case. The Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the suitability of the requested zoning.

Enclosed are all comments submitted from the members of the Committee at this time that offer or request information on your petition. If similar comments from the remaining members are received, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

Very truly yours,

Zoning Plans Advisory Committee

JED:dt

Maryland Department of Transportation State Highway Administration

Richard H. Trainor Secretary Hal Kassoff Administrator

June 24, 1988

Mr. J. Robert Haines Zoning Commissioner County Office Building Towson, Maryland 21204 Att: James Dyer

RE: Baltimore County Charles J. Kubin property Zoning meeting 6/21/88 S/S Pulaski Highway Maryland Route 40 160' west Ebenezer Road Item #439

Dear Mr. Haines:

After reviewing the submittal for a special exception for a single and double faced illuminated 12' x 25' advertising structure, the SHA Bureau of Engineering Access Permits has the following comment.

This submittal has been forwarded to the SHA Beautification Section c/o Morris Stein (333-1642), for all comments relative to

If you have any questions, call Larry Brocato of this office (333-1350).

Very truly yours,

Custon mille - J. M. Creston J. Mills Jr. Chief Bureau of Engineering Access Permits

LB/es

cc: J. Ogle

Morris Stein w/att.

ZONING GFFICE

My telephone number is (301) 333 € 1350

Teletypewriter for impaired Hearing or Speech
383-7555 Baltimore Metro - 565-0451 D.C. Metro - 1-800-492-5062 Statewide Toli Free
707 North Calvert St., Baltimore, Maryland 21203-0717

Baltimore County Department of Public Works Bureau of Traffic Engineering Courts Building, Suite 405 Towson, Maryland 21204 494-3554

July 18, 1988

Mr. J. Robert Haines Zoning Commisioner County Office Building Towson, Maryland 21204



Dear Mr. Haines:

The Bureau of Traffic Engineering has no comments for items number 391, 413, 438, 439, 442, 443, 444, 446, 447, 448, 450, 451, 452, 453, 454, 455, 456, and 457.

Assistant Traffic Engineer

SEW/RF/cps